

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BOBBY BANKS, TIMOTHY DOGAN,
ZANGERIO DOGAN, WILLIAM FRAZIER,
ERIC GOMEZ, RICHARD PHILLIPS, ARIC
RILEY, CHRISTOPHER ROBERTS, VAN
RODEN, RICKY ROMINES, LARRY
SANDERS, EMMANUEL STALLWORTH,
SHUN THOMAS, ARTHUR VARDAMAN,
SHELDON WATTS, and MARCUS
SIMPSON,

Plaintiffs,

v.

DIRECTV, LLC and MULTIBAND CORP.,

Defendants.

Case No. 1:14-cv-00398-LG-RHW

UNOPPOSED MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT

Plaintiffs move for leave to file a First Amended Complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure. A copy of the proposed amended complaint is attached as Exhibit A. This Motion is filed unopposed.

ARGUMENT

Under Federal Rule of Civil Procedure 15(a)(2), “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). This language establishes a “presumption in favor of granting parties leave to amend,” which serves the aim of “promoting litigation on the merits rather than on procedural technicalities.” *Mayeaux v. La. Health Serv. And Indem. Co.*, 376 F.3d 420, 425, 427 (5th Cir. 2004). Though the decision

whether to grant leave to amend is committed to a district judge's discretion, "the term 'discretion' in this context may be misleading, because Fed. R. Civ. P. 15(a) evinces a bias in favor of granting leave to amend." *Id.* (internal quotation marks omitted). Thus, a district court abuses its discretion if it denies leave to amend without a "substantial reason," such as undue delay, bad faith, dilatory motive, repeated failures to cure deficiencies, undue prejudice, or futility of amendment. *Id.* at 425 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Here, this Motion is filed unopposed by opposing counsel and should therefore be granted.

Per the schedule set out in the Court's Order of February 12, 2015, Plaintiffs attach the proposed first amended complaint. (Doc. 13, Order). The proposed complaint clarifies and amplifies many of the concerns defendants raised in the parties' multiple meet and confer discussions. Although Plaintiffs believe that the original complaint satisfied all requirements necessary to state claims under the Fair Labor Standards Act, in order to avoid motion practice on procedural issues, Plaintiffs have agreed to amend their complaint. The proposed complaint includes additional factual allegations for each individual Plaintiff, amplifying and making clearer the violations of the FLSA by Defendants.

CONCLUSION

For the reasons set forth above, the Court should grant Plaintiffs' Motion for Leave to File a First Amended Complaint, and such other and further relief as the Court deems just in the premises.

Dated: February 27, 2015

Respectfully submitted,

/s/ Cynthia D. Burney

By: _____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served on all attorneys of record via the Court's electronic case filing system on February 27, 2015.

/s/ Cynthia D. Burney
By _____
Attorney for Plaintiff